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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
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July 18, 2016

Captain Steven Katz
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Johnny Martinez
J.S.I.D. File #14-0643
L.A.S.D. File #014-15357-2172-013

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 4, 2014, fatal shooting of Johnny Martinez by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Ernesto Hernandez, #[redacted]
Deputy [redacted], #[redacted]
Deputy [redacted], #[redacted]
Deputy Pedro Guerrero-Gonzalez, #[redacted]

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MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Johnny Martinez
J.S.I.D. File #14-0643
L.A.S.D. File #014-15357-2172-013

DATE: July 18, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the October 4, 2014, fatal shooting of Johnny Martinez by Los Angeles County Sheriff's Department (LASD) Deputies Ernesto Hernandez, [redacted], [redacted] and Pedro Guerrero-Gonzales. We have concluded that the above deputies acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:35 p.m., on October 4, 2014. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, fingerprint reports, forensic analysis reports, the autopsy report, crime scene diagrams and sketches, photographic evidence, and witness statements submitted to this office by LASD Detectives Tracy Healy and Eduardo Aguirre. The voluntary statements of all involved deputies were considered as part of this analysis.

FACTUAL ANALYSIS

On October 4, 2014, at approximately 7:00 p.m., LASD Deputies Ernesto Hernandez, [redacted] and Pedro Guerrero-Gonzales responded to [redacted] E. 75th Street in the County of Los Angeles in response to a radio call of an assault with a deadly weapon.[1] The informant had indicated to dispatch that his [redacted] was stabbed in the head by a [redacted]

[1] All four deputies arrived at the location in marked black and white LASD patrol vehicles, and all were dressed in Class A uniforms, clearly identifying them as police officers.

[redacted] and Guerrero were the first unit to arrive at the location. Upon their arrival, Guerrero observed a man, later identified as [redacted] standing on the sidewalk, bleeding from the right side of his head.[2] [redacted] told Guerrero, in Spanish, he had just been stabbed in the head by his [redacted] later identified as Johnny Martinez.[3] [redacted] then directed Guerrero to Martinez' location in the rear of a driveway adjacent to [redacted] residence.

Deputies Hernandez and [redacted] arrived at the location during Guerrero's conversation with [redacted] Guerrero briefed them and [redacted] on what [redacted] told him. Martinez' [redacted] approached the deputies and [redacted] made a brief statement to Guerrero and Hernandez.[4] [redacted] advised deputies that Martinez was no longer armed with a knife and she walked away from the deputies towards the rear driveway.

[redacted] told Guerrero that Martinez was to the rear of the driveway. As the deputies walked down the driveway, they observed Martinez sitting on a small porch to the rear of the driveway.[5] The deputies approached Martinez in order to conduct an investigation into the assault with a deadly weapon radio call.[6] Martinez was facing the deputies and had his hands in his lap when deputies initially approached him.

[redacted] and Hernandez approached Martinez. Hernandez recognized Martinez from a prior contact within the last year, and attempted to engage him in conversation.[7] Hernandez asked Martinez, "Hey dude, don't you remember me?" Martinez replied, "Fuck you, get away." Hernandez ordered Martinez to stand up and place his hands behind his back. Martinez ignored these commands. Martinez began screaming, "Fuck you, get away, I'm not going to go with you! No, no, no!" Hernandez attempted to grab Martinez' right arm and placed his other hand on Martinez' shoulder. Martinez reached under his right leg with his right hand, producing a 6" to 8" knife.[8] Guerrero shouted, "He's got a knife!" and [redacted] yelled, "Knife!" Hernandez took a couple of steps backward as Martinez swung the knife at Hernandez' face while still seated, from a distance of one to two feet, nearly striking him.

Guerrero drew his service weapon and ordered Martinez to drop the knife several times. [redacted] attempted to intervene, but was ordered to stand back. Hernandez then ordered [redacted] to deploy his Taser on Martinez. [redacted] shot Martinez with his Taser while Martinez was still sitting on the step from a distance of six to eight feet away. Both prongs stuck in Martinez' upper torso, but did not

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[2] [redacted] will be referred to as [redacted] for clarity.

[3] [redacted] also observed the injuries to [redacted] but does not speak Spanish, and was unable to understand his statements to Guerrero at that time. Deputy Hernandez overheard [redacted] statement and observed the injuries.

[4] [redacted] will be referred to as [redacted] and [redacted] will be referred to as [redacted] for clarity.

[5] Martinez was 6'1 tall and weighed approximately 312 pounds. He was wearing shorts and no shirt when initially observed by the deputies.

[6] A tactical plan was created prior to approaching Martinez. Hernandez was assigned to be "lethal," Guerrero was assigned to be "hands on," [redacted] was assigned to be "less lethal/Taser," and [redacted] was assigned to be "hot radio" and "back up lethal."

[7] Hernandez had previously handled a call at the same location. At that time, [redacted] advised him that Martinez was upset because she did not want to give him money to buy marijuana. [redacted] wanted Martinez to leave, and Hernandez was eventually able to persuade Martinez to leave the location.

[8] [redacted] described the knife as having a black handle, similar to a steak knife.

appear to have any effect on him. Martinez stood up as he pulled out the Taser prongs, still holding the knife in his right hand.

[redacted] and Hernandez ordered Martinez to, "Stop fighting" with them and to drop the knife. Hernandez then sprayed Martinez in his face with a four to five second burst of his department issued pepper spray. Martinez wiped his face with his left hand, still holding the knife in his right hand. The spray did not appear to have any effect on Martinez. [redacted] removed his service weapon from his holster and ordered Martinez to drop the knife approximately eight or nine times. [redacted] ordered Martinez to drop the knife approximately ten times. Guerrero and Hernandez also ordered Martinez to drop the knife repeatedly. Martinez did not drop the knife, instead looking at the four deputies and then charging towards [redacted] and Guerrero.

[redacted] observed Martinez "running towards him," with the knife raised above his head. [redacted] had his back to a fence and believed Martinez was going to kill him. In fear for his safety and that of Guerrero, [redacted] fired what he believed were two to four rounds from his service weapon. When Martinez did not stop charging, [redacted] reassessed and fired what he believed were an additional three to four rounds until Martinez fell to the ground.[9]

Guerrero also fired his service weapon in fear that Martinez would strike him with the knife, reloading and firing additional rounds when Martinez continued lunging towards him after the initial shots were fired. Guerrero was unsure how many rounds he fired in total.[10]

[redacted] fired three rounds from his service weapon in fear for his and his fellow deputies' safety. [redacted] then fired an additional three rounds when Martinez continued moving towards them after the initial rounds had been fired.[11]

Hernandez, fearing for the safety of his fellow deputies, fired what he believed were three to four rounds from his service weapon from a distance of eight to ten feet away. Seeing that Martinez was not going down, Hernandez then re-assessed and fired what he believed were an additional three to four rounds until the threat was over.[12]

Once Martinez was on the ground, paramedics were immediately summoned.

[redacted] was struck in his upper leg by an errant bullet or bullet fragment during the officer involved shooting, and was transported to the hospital. [redacted] was interviewed at the hospital, and told detectives that Martinez had been armed with two small kitchen knives when he assaulted [redacted] without provocation. After the assault, Martinez forced his way into [redacted] residence, causing [redacted] to flee. [redacted] instructed his [redacted] to call 9-1-1.[13] [redacted] directed deputies to Martinez' location, and heard deputies issuing commands in English. [redacted] does not speak English, so he did not know what commands were issued, but indicated it did not appear that Martinez was following them. [redacted] then observed one of the deputies using a Taser on Martinez.

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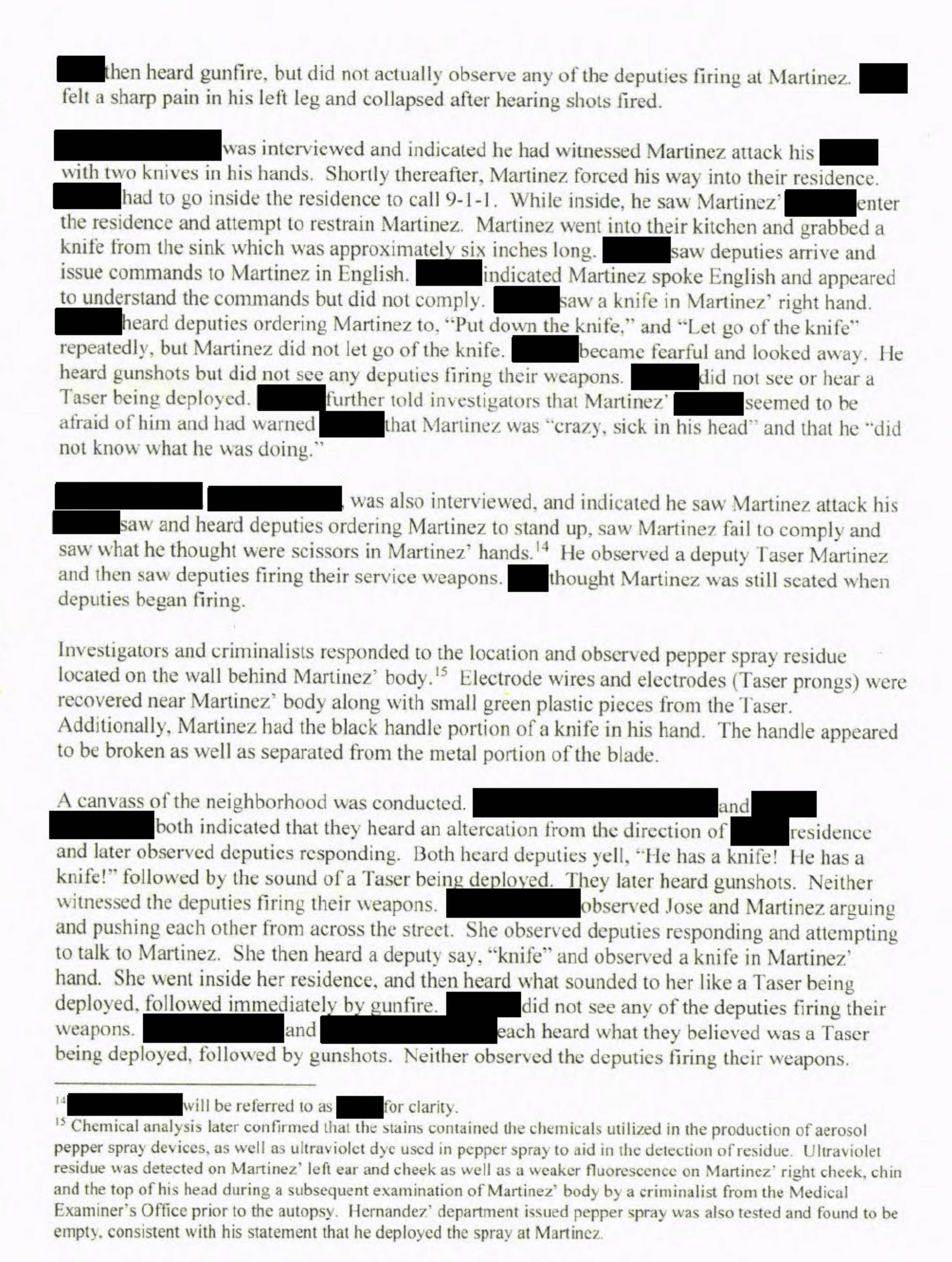
[9] Ballistics analysis indicates [redacted] fired a total of five rounds.

[10] Ballistics analysis indicates Guerrero fired a total of 15 rounds.

[11] Ballistics analysis confirms that [redacted] fired a total of six rounds.

[12] Ballistics analysis indicates Hernandez fired a total of eight rounds.

[13] [redacted] will be referred to as [redacted] for clarity.



[redacted] then heard gunfire, but did not actually observe any of the deputies firing at Martinez. [redacted] felt a sharp pain in his left leg and collapsed after hearing shots fired.

[redacted] was interviewed and indicated he had witnessed Martinez attack his [redacted] with two knives in his hands. Shortly thereafter, Martinez forced his way into their residence. [redacted] had to go inside the residence to call 9-1-1. While inside, he saw Martinez' [redacted] enter the residence and attempt to restrain Martinez. Martinez went into their kitchen and grabbed a knife from the sink which was approximately six inches long. [redacted] saw deputies arrive and issue commands to Martinez in English. [redacted] indicated Martinez spoke English and appeared to understand the commands but did not comply. [redacted] saw a knife in Martinez' right hand. [redacted] heard deputies ordering Martinez to, "Put down the knife," and "Let go of the knife" repeatedly, but Martinez did not let go of the knife. [redacted] became fearful and looked away. He heard gunshots but did not see any deputies firing their weapons. [redacted] did not see or hear a Taser being deployed. [redacted] further told investigators that Martinez' [redacted] seemed to be afraid of him and had warned [redacted] that Martinez was "crazy, sick in his head" and that he "did not know what he was doing."

[redacted] [redacted], was also interviewed, and indicated he saw Martinez attack his [redacted] saw and heard deputies ordering Martinez to stand up, saw Martinez fail to comply and saw what he thought were scissors in Martinez' hands.[14] He observed a deputy Taser Martinez and then saw deputies firing their service weapons. [redacted] thought Martinez was still seated when deputies began firing.

Investigators and criminalists responded to the location and observed pepper spray residue located on the wall behind Martinez' body.[15] Electrode wires and electrodes (Taser prongs) were recovered near Martinez' body along with small green plastic pieces from the Taser. Additionally, Martinez had the black handle portion of a knife in his hand. The handle appeared to be broken as well as separated from the metal portion of the blade.

A canvass of the neighborhood was conducted. [redacted] and [redacted] both indicated that they heard an altercation from the direction of [redacted] residence and later observed deputies responding. Both heard deputies yell, "He has a knife! He has a knife!" followed by the sound of a Taser being deployed. They later heard gunshots. Neither witnessed the deputies firing their weapons. [redacted] observed Jose and Martinez arguing and pushing each other from across the street. She observed deputies responding and attempting to talk to Martinez. She then heard a deputy say, "knife" and observed a knife in Martinez' hand. She went inside her residence, and then heard what sounded to her like a Taser being deployed, followed immediately by gunfire. [redacted] did not see any of the deputies firing their weapons. [redacted] and [redacted] each heard what they believed was a Taser being deployed, followed by gunshots. Neither observed the deputies firing their weapons.

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[14] [redacted] will be referred to as [redacted] for clarity.

[15] Chemical analysis later confirmed that the stains contained the chemicals utilized in the production of aerosol pepper spray devices, as well as ultraviolet dye used in pepper spray to aid in the detection of residue. Ultraviolet residue was detected on Martinez' left ear and cheek as well as a weaker fluorescence on Martinez' right cheek, chin and the top of his head during a subsequent examination of Martinez' body by a criminalist from the Medical Examiner's Office prior to the autopsy. Hernandez' department issued pepper spray was also tested and found to be empty, consistent with his statement that he deployed the spray at Martinez.

[redacted] was also interviewed at the location. He advised investigators that he observed a knife in Martinez' hand when he was shot. He further stated that Martinez was schizophrenic and while in [redacted] residence prior to the altercation, Martinez had been yelling at [redacted] "Let's go! Let's go! Aren't you scared? They're going to kill us!" Martinez then walked outside and hit [redacted] and seemed to want to hit [redacted] as well. [redacted] indicated that Martinez would become paranoid on occasion. Martinez' condition seemed to have worsened recently and he was acting more abnormally, hearing voices and talking to himself. After Martinez struck [redacted] Martinez was able to force his way past [redacted] into [redacted] residence. Martinez went into the kitchen, and [redacted] believed he was looking for a knife. When deputies approached Martinez, [redacted] observed him holding a 6" to 8" knife in the air, which [redacted] believed he had taken from [redacted] kitchen.[16] [redacted] heard deputies screaming for Martinez to drop the knife. Martinez also started screaming. [redacted] observed Martinez quickly stand up holding the knife. [redacted] then observed deputies firing their weapons at Martinez.

[redacted] was interviewed at Century Station after the shooting. She advised investigators that she had seen Martinez strike [redacted] and she instructed [redacted] to call the police. She saw Martinez follow [redacted] into his residence. When deputies arrived, she walked to the steps where Martinez was sitting and observed he had a knife. [redacted] was told by the police to move to the back of the location. [redacted] saw Martinez stand up while holding a knife in his left hand. She heard deputies ordering him to drop the knife in Spanish, then heard gunshots. [redacted] did not see the shooting. [redacted] told investigators Martinez was schizophrenic, but denied he was violent. [redacted] confirmed she had called the police regarding her son previously when he went to hug her, but ended up hurting her. [redacted] also confirmed that she had told [redacted] to stay away from Martinez to avoid an altercation.

An autopsy was conducted on October 6, 2014, by Deputy Medical Examiner Ogbanna Chinwah. Dr. Chinwah attributed the cause of death to multiple gunshot wounds to the chest, abdomen, back, upper and lower extremities as well as a gunshot wound to the right hand. During his examination, Chinwah noted a dart puncture on Martinez' lower left abdomen, consistent with a Taser probe. Chinwah indicated that the gunshot wounds to the back of Martinez' body were consistent with Martinez being spun by the impact of earlier shots, resulting in later rounds hitting the back of his body.[17] A toxicology analysis done at the time of the autopsy did not detect any narcotics, but did reveal that Martinez had .02% blood alcohol in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground

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[16] Subsequent comparison of the knives located in [redacted] kitchen found them to be the same type and brand as that found in Martinez' hand.

[17] Dr. Chinwah provided this opinion when questioned by Detective Aguirre on January 20, 2016.

in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight….The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that each of the involved deputies fired their service weapons in response to an imminent deadly threat. Martinez was armed with a knife and moving towards two deputies at the time shots were fired. Prior efforts to verbally convince Martinez to surrender were ineffective as were the deputies' use of less lethal alternatives such as pepper spray and a Taser. Given Martinez' size, the fact he had already assaulted Jose, and his failure to comply with commands to drop the knife, deputies were reasonable in their use of deadly force to stop Martinez from advancing towards Deputies Guerrero and [redacted] with the knife.

CONCLUSION

We find that Deputies [redacted], [redacted], Hernandez and Guerrero acted lawfully in self-defense and in defense of others when they used deadly force against Johnny Martinez. We are closing our file and will take no further action in this matter.